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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,273	12/05/2003	Ramon Kuczera	G00366/US	1611

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GKN DRIVELINE NORTH AMERICA, INC
3300 UNIVERSITY DRIVE
AUBURN HILLS, MI 48326

EXAMINER

BINDA, GREGORY JOHN

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/729,273	Applicant(s) KUCZERA ET AL.	
	Examiner Greg Binda	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
 5) ☒ Claim(s) 1-8 is/are allowed.
 6) ☒ Claim(s) 9 and 18-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 09 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/9/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

2. Claims 10-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election of Species I shown in Fig. 3 was made **without** traverse in the reply filed on Feb 16, 2005.

3. Claim 9 has been amended so that it no longer reads on the unelected species (the energy absorption surfaces of the unelected species are not deformable). As such withdrawn claims 10-17 should be canceled since they can no longer be rejoined.

Information Disclosure Statement

4. The information disclosure statement filed June 9, 2005 has not been considered because it fails to comply with 37 CFR 1.97(c) because it lacks

- a. the fee set forth in 37 CFR 1.17(p); and/or
- b. a statement as specified in 37 CFR 1.97(e).

It has been placed in the application file, but the information referred to therein has not been considered. (Applicant should note that two of the references listed on the PTO/SB08a, US 2003/008716 and US 2003/045365, do not exist in either the U. S. Patents database or the U. S. Patent Publications database.

Claim Rejections - 35 USC § 112

5. Claims 9 & 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 9, lines 19 & 20 recites the limitation, “the [deformable] energy absorption surface interferes with said ball cage”. Applicant has not pointed out where this limitation is supported, nor does there appear to be a written description of the limitation in the application as originally filed.

Claim Rejections - 35 USC § 103

6. Claims 19 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Booker et al, US 6,585,601 (Booker).

a. Claim 19. The admitted prior art (see paragraph 0008) discloses a constant velocity cross groove hybrid joint comprising all the limitations in claim 19, lines 1-16, 21 & 22. The joint of the admitted prior art does not however necessarily include an energy absorption surface that interferes with a ball cage when the joint is operated beyond its normal axial plunge range. Booker shows a constant velocity which includes an energy absorption surface 34 that interferes with the ball cage 26 when the joint is operated beyond its normal axial plunge range. Booker teaches, at col. 1, lines 58+, that providing a constant velocity joint with such an energy absorption surface provides means to control the collapsing force profile without adding to the complexity and cost of

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the joint. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cross groove hybrid joint of the admitted prior art by including an energy absorption surface that interferes with the ball cage when the joint is operated beyond its normal axial plunge range in order to provide means to control the collapsing force profile without adding to the complexity and cost of the joint as taught by Booker

b. Claim 20. Booker shows the constant velocity joint comprising a grease cap 44. Booker teaches in col. 4, lines 32-35, providing a constant velocity joint with a grease cap in order to provide a means for retaining lubricant and for absorbing energy. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cross groove hybrid joint of the admitted prior art by including a grease cap in order to provide a means for retaining lubricant and for absorbing energy as taught by Booker.

Response to Arguments

7. Applicant's arguments filed June 9, 2005 have been fully considered but they are not persuasive.

a. Applicant argues that GB 1,327,952 should be considered by the examiner because a legible copy was provided in the information disclosure statement filed December 5, 2003. However, no copy of the reference, legible or otherwise, was in the application file when the prior Office action was prepared. That is why the reference was not considered. Applicant is advised that the date of any re-submission of any item of information contained in a information disclosure statement or the submission of any **missing element(s)** will be the date of submission for purposes of determining compliance with

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the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

b. Applicant argues that GB 1,327,952 should be considered by the examiner because a legible copy was filed June 9, 2005. However, the reference was not considered because:

- i. it was not included in an information disclosure statement filed in accordance with 37 CFR 1.97 and 1.98; and/or
- ii. it was not submitted as evidence directed to an issue of patentability raised in an Office action. See MPEP 609 C(3).

c. Applicant argues that the combination of the admitted prior art and Booker fails to include all the limitations of the claims because Booker fails to show an energy absorption surface (deformable or otherwise) that interferes with torque transmitting balls. However, since no such feature is required of the claimed invention, no such feature is required of prior art in order for it to read on the claims.

Allowable Subject Matter

8. Claims 1-8 are allowed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Binda whose telephone number is (571) 272-7077. The examiner can normally be reached on M-F 9:30 am to 7:00 pm with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



GREGORY J. BINDA
PRIMARY EXAMINER